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W.P.Nos. 13171 & 13173 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

and

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

Writ Petition Nos. 13171 and 13173 of 2020

and

WMP.Nos. 16307 & 16308 of 2020

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The Diocese of Chengalpet
represented by Rev. Fr.Immanuvel Raj,
Property in-Charge
St. Thom as Mount,
Chennai – 600 016.

.. Petitioner in both WPs

Versus

1. The Chief Executive Officer
Office of the Cantonment Board
St. Thomas Mount
Chennai-600 016.

... Respondent in both WPs

2. Anna Mary
No.21, Mathiyas Nagar
St. Thomas Mount
Chennai-600 016.

.. Respondent in WP.No.13171/2020



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3. Regina

No.40/1, Mathiyas Nagar

St. Thomas Mount

Chennai-600 016.

.. Respondent in WP.No.13173/2020

Prayer in W.P.No.13171 of 2020 filed under Article 226 of the Constitution of India praying Writ of Mandamus to direct the 1st respondent to take necessary action against the 2nd respondent to stop the illegal construction put up by the 2nd respondent at No. 21, Mathiyas Nagar, St. Thomas Mount, Chennai – 16 and to demolish the unauthorized portion.

Prayer in W.P.No.13173 of 2020 filed under Article 226 of the Constitution of India praying Writ of Mandamus to direct the 1st respondent to take necessary action against the 2nd respondent to stop the illegal construction put up by the 2nd respondent at No. 40/1, Mathiyas Nagar, St. Thomas Mount, Chennai – 16 and to demolish the unauthorized portion.

For Petitioner : Ms.G.Selvi George
[In both WPs]

For R1 : Mr.C. Mohan
[In both Wps] M/s. King and Partridge

For R2 : No Appearance
[In both WPs]

COMMON ORDER



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[Order of the Court was made by **S.S.SUNDAR, J**]

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Since the issue involved in both the writ petitions is one and the same, they are disposed of by this Common Order.

2. It is the case of the petitioner that the Arch Diocese of Madras, Mylapore was bifurcated into, two, namely, (i) Roman Catholic Diocese of Madras Mylapore, (ii) Roman Catholic Diocese of Chengalpet. It is the further case that as per the bifurcation, the entire property which is the subject matter of this writ petition, vested with the Diocese of Chengalpet, the petitioner herein. It is stated that the petitioner is in actual possession and enjoyment of several parcels of lands in St. Thomas Mount, Chennai – 600 016, including the property where the second respondent in the two writ petitions have put up unauthorized constructions each in an extent of 2500 sq.ft.

3. Though according to the petitioner, Revenue Records stand in the name of the petitioner, it is stated in the petitioner's affidavit that the second



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respondent in the two writs had encroached into the Church properties by making illegal construction measuring to an extent of 2500 sq.ft each without getting permission or licence. It is also stated that no construction or building can be erected within the Cantonment area without the sanction of the first respondent, as required under Section 234 of the Cantonment Act. Stating that the second respondent in both writ petitions have not obtained any sanction from the first respondent for any construction and claiming ownership over the property, the above Writ Petitions, are filed by the petitioner for removal of unauthorized construction.

4. A counter affidavit has been filed by the first respondent stating that in W.P.No. 13171 of 2020, the second respondent had put up unauthorized construction without any planning permission/planning approval of the Cantonment Board as required under Section 235 of the Cantonment Act. Similarly, the second respondent in WP.No. 13173 of 2020 had put up unauthorized construction without any planning permission/planning approval of the Cantonment Board. The unauthorized construction according to the first



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respondent is 410 sq.ft in the case of W.P.No. 13171 of 2020 and 508 sq.ft in the

ground floor in the case of W.P.No.13173 of 2020. In both the cases, the first

respondent stated that the respective second respondent had violated the

provisions of Cantonment Act and therefore, notice had been issued to the

second respondent in both the Writ Petitions under Sections 239, 247 and 248 of

the Cantonment Act. Independent notices are issued to the 2nd respondent in

each case for the violations under Sections 239, 247 and 248(1), 320 and 249 of

the Cantonment Act, 2006. The first respondent being the Administrative

Authority/Governing Body in Cantonment area, has promptly acted. Probably

due to the pendency of the writ petition, they are unable to move further towards

removal of unauthorized construction. The learned Counsel appearing for the

first respondent submitted further that they require police assistance to carry out

demolition to avoid any law and order situation.

5. The learned counsel appearing for the first respondent fairly submitted that the first respondent will take appropriate action in accordance

with law if a further direction is issued to the Deputy Commissioner of Police,



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St. Thomas Mount, Chennai-600 016, to give police assistance as contemplated in terms of Section 315 of the Cantonment Act, 2006.

6. The learned Counsel further submitted that the petitioner has also constructed buildings in violation of provisions of Cantonment Act and that the first respondent may be permitted to take appropriate action if necessary as against the petitioner too. No such permission is required if any construction is in violation of Cantonment Act, 2006. The learned Counsel appearing for the petitioner has produced before this Court proof for service of private notice to the second respondent in both cases. Despite service of notice as permitted by this Court, there is no representation for the second respondent in both cases.

7. Considering the nature of grievance and the existence of unauthorized constructions admitted by the first respondent in both the Writ Petitions and specific allegations made by the petitioner, this Court is inclined to pass the following order:-

(i) The first respondent/Cantonment Board is



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directed to proceed further pursuant to the notice issued to the 2nd respondent in both the Writ Petitions under Sections 239, 247, 248, 320 and 249 of the Cantonment Act, in accordance with law.

(ii) It is open to the first respondent for appropriate action for the removal of unauthorised constructions. If any attempt is made by respective second respondent for regularization or approval, the same can be dealt with only after issuing notice and hearing the petitioners.

(iii) When a request is made by the first respondent, the Deputy Commissioner of Police having territorial jurisdiction shall depute necessary persons to carry out the direction of this Court.

(iv) It is always open to the first respondent to initiate further proceedings as against the petitioner if the petitioner has also put up construction in violation of any of the provisions of the Cantonment Act, 2006.



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8. With the above directions, both the Writ Petitions are disposed of.

However, there shall be no order as to costs. Consequently, connected

Miscellaneous Petitions are closed.

[S.S.S.R., J] [N.S., J]

05.01.2024

Index: Yes

Speaking order: Yes

Neutral Citation: Yes

MSM

To

The Chief Executive Officer
Office of the Contonmenet Board
St. Thomas Mount
Chennai – 600 016.



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S.S. SUNDAR, J
and
N. SENTHILKUMAR, J

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